

January 21, 2003

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**DEBARMENT OF AUTOMATION DATA SOLUTIONS
(ALL DISTRICTS AFFECTED) (3 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Adopt the proposed findings, decision, and recommendations of the Contractor Hearing Board to debar Automation Data Solutions and its principal owner Ms. Renee Setero from bidding on, being awarded, and/or performing work on any projects for the County of Los Angeles for a period of three years, effective from the date of your Board's approval.
2. Instruct the Executive Officer, Board of Supervisors, to send notice to Ms. Renee Setero and Automation Data Solutions, advising of the debarment action taken by your Board.
3. Instruct the Director of Internal Services to enter this determination to debar Automation Data Solutions and Ms. Renee Setero into the Contract Data Base.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended debarment action against the contractor, Automation Data Solutions (ADS), and its principal owner Ms. Renee Setero (Setero), is to ensure the County of Los Angeles (County) contracts only with responsible contractors who comply with all relevant State and Federal labor and employment laws, as well as the terms and conditions of their County contracts.

Implementation of Strategic Plan Goals

The recommended actions are consistent with the County's Vision which supports shared values of integrity, professionalism, and accountability, and envisions the County as the premier organization for those working in the public's interest with a pledge to always work to earn the public trust.

FISCAL IMPACT/FINANCING

Not applicable.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Contractor Hearing Board (CHB) Responsibilities

County Code Chapter 2.202, the Contractor Non-Responsibility and Debarment Ordinance, establishes the CHB to provide an independent review of the contracting department's recommendation to debar a contractor. The CHB is chaired by a representative from the Chief Administrative Office (CAO) and includes one representative from the Office of Affirmative Action Compliance (OAAC) and the Departments of Internal Services (ISD) and Public Works (DPW), respectively. The CAO is a nonvoting member except in the event the debarment action is initiated by the OAAC, ISD or DPW. In such instances, the CAO exercises its vote and the CHB member from the department bringing the debarment action must recuse himself/herself from any participation in the hearing. In this particular debarment hearing, the representative from ISD did not sit on the CHB as the debarment action was initiated against an ISD contractor. Therefore, the CAO representative voted.

ADS Alleged Breach of Contract

ISD requested the CAO to convene the CHB to initiate debarment proceedings against ADS and its principal owner(s) for material breach of the Information Technology Support Services Master Agreement (ITSSMA) between ADS and the County, specifically for subcontracting "time and materials" work orders while representing the subcontractors to be employees of the contractor. The ITSSMA prohibits subcontracting for time and materials work orders and Subparagraph 32 A provides for termination for default when a contractor has violated a provision or has otherwise materially breached the Master Agreement. ISD exercised its right to terminate the ITSSMA, effective August 31, 2002.

On November 5, 2002, ISD sent a certified letter to Setero, notifying her of their intent to initiate debarment proceedings against the company and its principal owner(s) at a hearing scheduled for December 12, 2002 at 1:00 p.m., in Room 374, of the Kenneth Hahn Hall of Administration (Attachment I). The notice further advised that failure to confirm the hearing date, or otherwise respond to the notice, might result in ADS waiving all rights of appeal. ISD indicated to the CHB that they obtained a signed receipt confirming delivery of the notice. However, ISD did not receive any response by the due date of December 3, 2002, nor did they receive any response to a follow-up phone call. As a result, no one appeared to represent ADS or Setero at the December 12 hearing and the hearing proceeded with only ISD presenting its case for debarment.

The proceedings were recorded and an audiotape is available upon request, as well as all documents entered into the record as exhibits during the hearing. Attachment II provides a listing of CHB members, ISD investigators, participating attorneys, and witnesses.

FINDINGS

The documentary and testimonial evidence entered into the record before the CHB demonstrated by the preponderance of evidence that ADS and Setero repeatedly committed acts or omissions that indicate a lack of business integrity or business honesty. Therefore, by unanimous vote, the CHB made a determination to submit its recommendations to your Board that debarment is appropriate and the appropriate term of debarment is three years, based on the following findings.

1. ITSSMA Prohibition of Subcontracting for Time and Materials Work Orders - Breach of Contract

A preponderance of evidence showed that ADS and Setero knowingly and repeatedly violated Subparagraph 6.6.2 of the ITSSMA, which specifies:

“CONTRACTOR personnel selected to perform on a “time and materials” work order must be employees of the CONTRACTOR.”

A contractor who uses subcontractors potentially has a bid price advantage over a competitor who uses employees and, therefore, bears higher overhead costs, e.g., personnel operations, withholding applicable State and Federal income taxes, FICA, unemployment insurance premiums, and potentially other employee benefits. The prohibition against subcontracting levels the playing field.

Evidence showed that ADS and Setero understood this requirement, as indicated by the signatures of its officers (including that of Setero) on six "Certification of Employee Status" forms they completed for the subcontractors (Attachment III) attesting that:

"1) I am an officer or partner of the CONTRACTOR; 2) The individual(s) named below are employees of this organization; 3) Applicable State and Federal income tax, FICA, unemployment insurance premiums and worker's compensations insurance premiums, in the correct amounts required by State and Federal law will be withheld as appropriate, and paid by CONTRACTOR for the individual(s) named below for the entire time period covered by the attached Work Order.

ADS additionally secured the signature of each of the six subcontractors on the "Contractor Employee Acknowledgement Confidentiality and Copyright Assignment Agreement" form that includes the following statement:

"I understand and agree that the Contractor referenced above is my sole employer for purposes of the above-reference contract. I understand and agree that I must rely exclusively upon my employer for payment of salary and any and all other benefits payable to me or on my behalf by virtue of my performance of work under the above referenced contract."

Furthermore, during the compliance audit in July 2002, Setero acknowledged to the ISD Contract Program Monitor that her company exclusively uses subcontractors. She provided the ISD Monitor with copies of checks paid to the subcontractors without pay stubs or mandatory payroll deductions, as well as copies of Federal Form 1099-MISC reporting the subcontractors' earnings.

Oral and written evidence indicated that Setero was the principal of ADS and there was testimony that Setero was operating the business of ADS from her personal residence.

2. Magnitude and Extent of the Contract Breach

A preponderance of evidence showed that ADS and Setero repeatedly, over a period of more than two and one half years, knowingly misrepresented the status of six subcontractors as company employees. ISD reported that the total value of the six "time and materials" work orders issued to ADS since November 22, 1999 was \$1,053,000.

3. Period of Debarment

By unanimous vote, the CHB determined that its recommendation to your Board is debarment of ADS and Setero for the maximum period of three years. In making this determination, the CHB considered the repeated and blatant dishonesty of ADS officials misrepresenting the status of the company's subcontractor workforce as company employees. Furthermore, this lack of integrity may have given ADS a bid price advantage over other contractors when the selection of a contractor was based on low bid.

The CHB found no mitigating circumstances, based on the evidence presented, particularly since neither a company official nor other representative appeared at the hearing or attempted to contact ISD about the hearing. Therefore, the CHB concluded that the actions of ADS and Setero, as presented by ISD during the hearing both orally and in written documents, justified debarment for the maximum period of three years from the date of Board approval.

IMPACT ON CURRENT PROJECTS

The ITSSMA with ADS was terminated, effective August 31, 2002. Subparagraph 32.2 of the Agreement provides that:

"County, upon commercially reasonable terms consistent with County procurement policies, may procure goods and/or services equivalent to those so terminated (herein, any and all monetary expenses of doing so are collectively referred to as "Cover Costs"). Contractor shall be liable to County for any and all Cover Costs incurred by County."

ISD advises that the County will invoke this clause in the event any terminated work orders must be rebid and there are Cover Costs associated with the resultant rebids.

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CONCLUSION

The contractor debarment program has resulted in two prior debarments since the implementing instructions were issued in March 2000. We believe the process is working as your Board intended to help assure that the County contracts only with responsible contractors who comply with all relevant laws, as well as the terms and conditions of their contracts. We are aware of other pending debarment actions that will be addressed in early 2003 to continue the effort to contract only with responsible contractors.

Respectfully submitted,

MARTIN K. ZIMMERMAN
Chair, Contractor Hearing Board
Assistant Division Chief, Chief Administrative Office

MKZ:Nf:nl

Attachments (3)

c: Chief Administrative Officer
Affirmative Action Compliance Officer
County Counsel
Auditor-Controller
Director of Internal Services
Ms. Renee Setero, Automation Data Solutions